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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 DOMINIC MARROCCO,

Case No. 2:18-cv-02441-JAD-GWF

8 Plaintiff,

9 v.

**ORDER**

10 DAVID JOHNSTON, *et al.*,

11 Defendants.  
12

13 This matter is before the Court on Defendant's Motion to Proceed *in Forma Pauperis* (ECF  
14 No. 24), filed February 8, 2019 and Motion to Grant Defendant's Motion to Proceed *in Forma*  
15 *Pauperis* (ECF No. 39) filed February 22, 2019.

16 **BACKGROUND**

17 Plaintiff filed the Complaint (ECF No. 1) in this matter on December 31, 2018. Defendant  
18 filed his Application to Proceed *in Forma Pauperis* (ECF No. 24) pursuant to 28 U.S.C. § 1915.  
19 The complaint alleges various claims against Defendant including slander and intentional infliction  
20 of emotional distress.

21 **DISCUSSION**

22 **I. Application to Proceed *in Forma Pauperis***

23 The Ninth Circuit has recognized that "there is no formula set forth by statute, regulation,  
24 or case law to determine when someone is poor enough to earn IFP status." *Escobedo v. Applebees*,  
25 787 F. 1226, 1235 (9th Cir. 2015). An applicant need not be absolutely destitute to qualify for a  
26 waiver of costs and fees; nonetheless, he must demonstrate that because of his poverty he cannot  
27 pay those costs and still provide himself with the necessities of life. *Adkins v. E.I. DuPont de*  
28 *Nemours & Co.*, 335 U.S. 331, 339 (1948). The applicant's affidavit must state the facts regarding

1 the individual's poverty "with some particularity, definiteness and certainty." *United States v.*  
2 *McQuade*, 647 F. 2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F. 2d 723,  
3 725 (9th Cir. 1960)). It is within the discretion of the court to deny a request to proceed *in forma*  
4 *pauperis* if an individual is unable to unwilling to verify his or her poverty and the court determines  
5 that the individual's allegation of poverty is untrue. 28 U.S.C. § 1915(e)(2); *see, e.g., Martin v.*  
6 *Hahn*, 271 F. App'x 578 (9th Cir. 2008) (finding that the district court did not abuse its discretion  
7 by denying the plaintiff's request to proceed *in forma pauperis* because "failed to verify his poverty  
8 adequately.")

9 Here, Defendant has requested to proceed in this case *in forma pauperis* and he is unable  
10 to prepay the fees and costs associated with brining this action or give security for them. He  
11 represents that he: (1) is married with three children; (2) is self-employed, has no take home wages  
12 but does own stock in his own startup companies; (3) has a negative balance in his checking or  
13 savings account; and (4) receives Nevada State Assistance (TANIF \$440/month; and Food Stamps  
14 \$760/month). Defendant does not indicate how much, if any income or wages, his wife currently  
15 has. Defendant also lists his total monthly expenses as being approximately \$5,912.00.<sup>1</sup>  
16 Considering Defendant's monthly expenses in combination with his incomplete application with  
17 respect to his wife's income, Defendant seemingly has some discretionary income that is not  
18 accounted for in the application. Defendant therefore has not demonstrated to the Court the he is  
19 unable to pay the filing fee. Accordingly, upon consideration of the financial information  
20 provided, and to maintain the integrity of the indigent process requests

21 **IT IS HEREBY ORDERED** that Defendant's Motion to Proceed in Forma Pauperis (ECF  
22 No. 24), is **denied** without prejudice.

23 **IT IS FURTHER ORDERED** that Defendant's Motion to Grant Defendant's Motion to  
24 Proceed *in Forma Pauperis* (ECF No. 39) is **denied**, as moot.

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27 <sup>1</sup> Defendant represents that he has three dependents "Angel Aviles, E.J. and K.J." However, Defendant does not list  
28 how much, if any he contributes to their support. Nor does Defendant provide any financial information with respect  
to his wife's income.

1           **IT IS FURTHER ORDERED** that Defendant shall complete a long form application to  
2 proceed *in forma pauperis* (AO 239), a copy of which can be found on the Court's website.<sup>2</sup>  
3 Defendant will have until April 12, 2019 to file the long form application to proceed *in forma*  
4 *pauperis*.

5           Dated this 12th day of March, 2019.

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8           GEORGE FOLEY, JR.  
9           UNITED STATES MAGISTRATE JUDGE  
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28           <sup>2</sup> [https://www.uscourts.gov/sites/default/files/ao239\\_1.pdf](https://www.uscourts.gov/sites/default/files/ao239_1.pdf)